IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 217 of 1997
in
COMPANY APPLICATION No 64 of 1997
with
COMPANY PETITION No 218 of 1997
in
COMPANY APPLICATION No 63 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEWTON ENGINEERING & CONSTRUCTION LTD.
Versus
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Appearance:
MRS SWATI SOPARKAR for Petitioner
MR BHARAT T RAO for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/09/2000

ORAL COMMON JUDGEMENT

1. Heard learned counsel Mrs. Swati Soparkar for the petitioners in both these petitions. Today, during the course of submissions, she has tendered affidavit of one I.N. Gopinath, Director of the petitioner Company of Company Petition No. 217 of 1997, duly authorised by the Board of Directors to file affidavit on behalf of the company along with annexures, which is taken on record. Zerox copy of one letter addressed by Registrar of Companies, Gujarat which is taken on record, wherein it has been stated that it has been left to the High Court to decide the matters on merits. Mrs. Soparkar, learned counsel for the petitioner in both these petitions, has submitted that in view of the prayers made in both the petitions and averments made therein, both these petitions can be heard together and disposed of by the common judgment. Accordingly, both these petitions are heard together and are disposed of by this common judgment.

2. These are the petitions filed by two companies viz. Newton Engineering & construction Company Ltd. (Transferor Company) and Hitech Orgochem Ltd. (Transfere Company) for sanction of a scheme of arrangement in the nature of restructuring of the Share Capital of Hitech Orgochem Ltd. and the scheme of amalgamation of the Transferor company with the Transferee company under section 391 read with section 394 of the Companies Act,1956.

3. The Transferor company is engaged in the activity of manufacturing machines and equipments etc. and also erecting and constructing plants for chemical industry. The Transferee company was promoted for manufacturing of chemicals. The amalgamation would give the synergic benefits to the amalgamated company. The petitions give details of the advantages that would flow by virtue of the amalgamation of these companies. The petitions also give the jurisdiction for the reduction of capital of the Transferee company.

4. The Equity shareholders of the Transferor company had approved the scheme by written consents. Hence, their meeting was dispensed with under the order dated 6.3.1997. However, the said order directed the companies to convene and hold the meetings of the unsecured creditors of both the companies and the Equity Shareholders of the Transferee company. The Equity shareholders of the Transferee company and the unsecured creditors of both the petitioner companies had approved the scheme by requisite majority during the meetings convened on 24.4.1997 for this purpose. The Transferor

company had further undertaken to put on record the written consents from all the Secured Creditors. The written consent of the secured creditors of the Transferor company has been put on record today along with the additional affidavit dt; 1.9.2000.

5. After the petitions were admitted, they were advertised in the newspapers and the publication in the Government Gazette was dispensed with as directed in the order dated 7.5.1997. One of the unsecured creditors of the Transferor company had come forward with some objections to the said scheme of amalgamation. It is pertinent to note that Ms.Megha Jani appearing on behalf of unsecured creditor J. Rosales Pvt. Ltd., has submitted that initially said company has filed objections, but as the matter was settled out of court, winding up petition filed by said company came to be withdrawn on 8.9.1998. Obviously, therefore, objections filed by sole un-secured creditor do not survive. No other person has filed any objection to these petitions even after the publication of advertisement.

6. Notice of the petitions has been served upon the Central Government and Shri Akshaybhai H.Mehta, Central Govt. Standing Counsel and Smt. P.J.Dawawala, Addl. Central Government Standing Counsel appearing for the Central Government have stated that the Central Government has no objection in sanctioning the Scheme of Amalgamation.

7. Notice of the petition of the Transferor company has also been served upon the Official Liquidator as required under 2nd proviso to section 394(1) of the Act and the Official Liquidator has filed his Report dated 15.12.1998 stating that the affairs of the Transferor Company have not been conducted in a manner prejudicial to its members or to public interest.

8. Having gone through the petitions, I am satisfied that amalgamation would be in the interest of the companies and their members. Under the circumstances, the Scheme of Amalgamation (Annexure : C to the petitions) is sanctioned. Prayers in terms of para-23(A) in case of the Transferee Company in Company Petition No.218/97 and in terms of para-18(A) in case of Company Petition No. 217/97 of the Transferor Company are granted.

9. Both these petitions are disposed of accordingly. So far as the costs to be paid to the Central Government Standing Counsel is concerned, I quantify the same at Rs. 2500/ (Rs. Two thousand five hundred only) per

petition. The same shall be paid to Shri Akshaybhai Mehta for the Transferee Company and Smt. P.J.Dawawala for the Transferor Company.

5.9.2000 [C.K. BUCH, J]
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